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PRO SE APPELLANT:  
**PAUL L. PERNOKIS**  
Westville, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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PAUL L. PERNOKIS,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 20A04-0512-CV-744
	)	
TAMARA R. PERNOKIS,	)	
	)	
Appellee-Petitioner.	)	

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable Stephen E. Platt, Judge  
Cause No. 20D02-0503-DR-00216

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**March 5, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

In this dissolution case, Paul L. Pernokis (“Husband”), pro se, appeals the trial court’s division of the marital property. Specifically, he contends that the court erred in awarding 100% of the marital property to his ex-wife Tamara R. Pernokis (“Wife”). Because Husband is incarcerated in the Indiana Department of Correction (“DOC”) and consequently unable to support his child, Husband has not met his burden of showing an abuse of discretion in the trial court’s division of the marital property. We therefore affirm the trial court.

## **Facts and Procedural History**

Husband and Wife married on October 13, 2001. The parties have one child, M.P.<sup>1</sup> In November 2003, Husband was arrested and charged with dealing in cocaine and operating a motor vehicle after lifetime suspension. Thereafter, the parties separated. Husband was subsequently convicted and sentenced to fifteen years for dealing in cocaine and eight years for operating a motor vehicle after lifetime suspension in the DOC.

In March 2005, Wife filed a petition for dissolution of marriage. A final hearing was held in June 2005. At the hearing, Wife appeared by counsel, and Husband, who was incarcerated, appeared pro se in the custody of the sheriff. Thereafter, the trial court entered the following order:

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<sup>1</sup> It appears that Wife has two other children from previous marriages. At the time of the dissolution hearing in June 2005, M.P. was five years old.

Court finds contents of petition<sup>[2]</sup> are true, same should be and hereby is granted. Marriage of parties dissolved; parties restored to status of unmarried persons. Wife custody. Visitation as agreed noting father will be at IDOC for at least 9 ½ years. Father requests vehicles and boat, wife indicates they were sold to support child. Husband to pay \$25/wk support effective this Friday. Husband requests to file police report on missing personal items which were left at 315 Highland.<sup>[3]</sup>

Appellant's App. p. 4 (June 6, 2005, entry on Chronological Case Summary).<sup>4</sup> Father now appeals the trial court's division of the marital property.

### **Discussion and Decision**

At the outset, we note that Wife did not submit an appellee's brief.<sup>5</sup> In such a situation, we do not undertake the burden of developing arguments for the appellee. Applying a less stringent standard of review with respect to showings of reversible error, we may reverse the lower court if the appellant can establish prima facie error. *State Farm Ins. v. Freeman*, 847 N.E.2d 1047, 1048 (Ind. Ct. App. 2006). Prima facie is

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<sup>2</sup> We note that Husband did not include a copy of the dissolution petition in his appendix.

<sup>3</sup> It appears that the trial court meant "305 South Hively." See Appellant's App. p. 23, 25.

<sup>4</sup> Following this order, Husband filed a Motion for Adjustment of Marital Assets on November 21, 2005. The trial court entered the following order:

Court deems the Motion to be a motion to correct errors regarding property division, which the Court finds is not timely filed. Motion is denied. Court notes that Husband filed a motion to modify support and visitation. Record reviewed. Court finds that Husband's support order was set at the minimum amount and denies modification of support. Court does note, however, that while the support will continue to accrue, Husband will not be held in contempt for failure to pay while he is incarcerated. Court further declines to address the issue of visitation at this time, however, will schedule a hearing at request of Husband upon his release.

Appellant's App. p. 10 (December 8, 2005, entry on Chronological Case Summary).

<sup>5</sup> On February 2, 2007, Husband filed a Motion for a Ruling. In that motion, he asked this Court to issue an order "[c]ompelling the production of [Wife's] Brief." We do not compel parties to file briefs nor do we default them; however, we do apply a less stringent standard of review with respect to showings of reversible error. We therefore deny Husband's motion.

defined in this context as “at first sight, on first appearance, or on the face of it.” *Id.* The purpose of this rule is not to benefit the appellant. Rather, it is intended to relieve this Court of the burden of controverting the arguments advanced for reversal where that burden rests with the appellee. *Id.* Where an appellant is unable to meet that burden, we will affirm. *Id.*

On appeal, Husband contends that the trial court erred in dividing the marital property. Specifically, he argues that the court “never compensated [him] for any of the proceeds” of the items that Wife sold following his arrest. Appellant’s Br. p. 6. The disposition of marital assets is within the sound discretion of the trial court. *Hatten v. Hatten*, 825 N.E.2d 791, 794 (Ind. Ct. App. 2005), *trans. denied*. “When a party challenges the trial court’s division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal.” *Id.* (quotation omitted). When we review a claim that the trial court improperly divided marital property, we must decide whether the trial court’s decision constitutes an abuse of discretion, considering only the evidence most favorable to the trial court’s disposition of the property, without reweighing the evidence or assessing the credibility of witnesses. *Id.* An abuse of discretion occurs if the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the court or if the trial court has misinterpreted the law or disregards evidence of factors listed in the controlling statute. *Id.* Although the facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. *Id.*

By statute, the trial court must divide the property of the parties in a just and reasonable manner, including property owned by either spouse prior to the marriage, acquired by either spouse after the marriage and prior to final separation of the parties, or acquired by their joint efforts. Ind. Code § 31-15-7-4. An equal division of marital property is presumed to be just and reasonable. Ind. Code § 31-15-7-5. This presumption may be rebutted by a party who presents relevant evidence, including evidence of the following factors:

- (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
- (2) The extent to which the property was acquired by each spouse:
  - (A) before the marriage; or
  - (B) through inheritance or gift.
- (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
- (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
- (5) The earnings or earning ability of the parties as related to:
  - (A) a final division of property; and
  - (B) final determination of the property rights of the parties.

*Id.*

At the hearing, Husband, who had been incarcerated for twenty months at the time, testified that he would like his “[t]wo trucks, three cars, a boat and a garage full of tools” as well as his “clothes” returned to him.<sup>6</sup> Appellant’s App. p. 20. Wife testified

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<sup>6</sup> On appeal, Husband also requests additional items, such as a snow plow, NASCAR collectibles, and “Cam Corder/DVD/Clothing/Personal Property.” Appellant’s Br. p. 5. Besides the clothing, Husband did not present evidence of these items at the hearing and therefore cannot request them on appeal. As for the \$800.00 in the bank account that Husband also requests, the trial court addressed this issue at the hearing:

that she was not employed at the time of Husband's arrest and that she had to sell the vehicles<sup>7</sup> and boat to support her family. She also testified that when she moved from their marital residence at 305 South Hively, she did not bring Husband's possessions with her. The trial court commented:

So you've got to figure there isn't going to be anything but a minimum child support order. . . . [Husband's] going to be in custody for the next 23 years minus good time, so I would assume to the extent any property was converted by wife that she had a half interest in, it's going to be in lieu of support in any event.

*Id.* at 23.

While the trial court's order is not as detailed as it could have been, it is apparent that the court awarded Wife 100% of the marital property given "[t]he economic circumstances of each spouse at the time the disposition of the property is to become effective" as well as "[t]he earnings or earning ability of the parties." *See* I.C. § 31-15-7-5. That is, the court considered that Wife was not working at the time of Husband's arrest, that she had to support their child, and that Husband was serving a lengthy sentence in the DOC and therefore would not be able to support the child. Given these

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Dispute exists whether or not there was any money in the bank account. Wife indicates husband took it and then vice versa. Husband indicates he wishes to make a complaint to the Elkhart City Police Department about the disappearance of the asset which seems to be the only reasonable way to dispose of those items of property in dispute.

Appellant's App. p. 25. On appeal, Husband does not specifically challenge the trial court's handling of this asset.

<sup>7</sup> As for one of the vehicles, a "Ferro," Appellant's App. p. 22, Wife testified that she did not have the title to that, so she could not sell it. As for all five vehicles, Wife commented, "All five vehicles did not run. I mean we're not talking like five thousand dollar cars." *Id.*

circumstances, Husband has not met his burden of showing an abuse of discretion in the trial court's division of the marital property.<sup>8</sup> Therefore, we affirm the trial court.

Affirmed.

BAILEY, J., and BARNES, J., concur.

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<sup>8</sup> In the last sentence of the argument section of his brief, Husband also mentions that the trial court erred in not resolving child support and visitation issues. *See* Appellant's Br. p. 6. However, Husband has waived these issues for failure to present a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a). Also near the end of his brief, Husband argues that the trial court erred in not valuing the marital property. *See* Appellant's Br. p. 6. However, Husband did not present evidence of the value of any of the marital property at the hearing and has therefore waived this issue as well.